

Application No. 10/640,553
Amendment dated April 21, 2008
Reply to Final Office Action of February 21, 2008

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REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Final Office Action mailed on February 21, 2008, and the references cited therewith.

Claims 1 and 26 are amended and no claims are canceled or added; as a result, claims 1-26 are now pending in this application. Applicant specifically notes that claims 8-18 and 22-25 were previously withdrawn, but are still pending.

§ 112 Rejection of the Claims

Claims 1-7, 19-21 and 26 were rejected under 35 USC § 112, first paragraph, as containing subject matter which was not described in the specification in such a way to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant has amended independent claims 1 and 26 to recited that the negative hearing aid mold has "an inside surface with dimensions the same as the outside dimensions of the auditory canal", as suggested by the Examiner. As such, Applicant respectfully requests reconsideration and withdrawal of the 112 rejection of independent claims 1 and 26, as well as those claims that depend therefrom.

§ 103 Rejection of the Claims

Claims 1, 2, 6, 7, 19 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Widmer et al. (U.S. Patent No. 6,540,445) for reasons of record noting the following. Applicant has amended claim 1, however, Applicant does not admit that the Widmer reference describes, teaches, or renders obvious each and every element and limitation of the above claims, as originally presented, and reserves the right to argue the same at a later date.

Nonetheless, Applicant believes that independent claim 1, as amended, is non-obvious in view of the Widmer reference and Applicant respectfully traverses the rejection as follows.

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Applicant respectfully submits that Widmer does not support a proper prima facie case of obviousness as Widmer, besides other things, does not describe or suggest all the elements recited in claim 1. For example, Applicant is unable to find in Widmer a method including "processing the outside auditory canal dimension data to generate outside mold data; and creating a negative hearing aid mold having an inside surface with dimensions the same as the outside dimensions of the auditory canal, with the negative hearing aid mold suitable for receipt of a soft solid", as provided in claim 1.

At page 2 in the Office Action the Examiner stated the Widmer reference teaches "that it is known in the art to 'produce a model of the shape of the individual auditory canal, thereby taking a mold thereof, typically of silicon.'" This teaching in the Widmer reference does not teach "processing auditory canal dimension measurement data representing dimensions of an auditory canal to generate outside auditory canal dimension data that represents outside dimensions of the auditory canal" and also does not teach "processing the outside auditory canal dimension data to generate outside mold data", as recited in independent claim 1.

The Examiner goes on to state at page 3 of the Office Action that

If it is known to make a mold from the dimensions of the auditory canal, then surely such would have been an obvious modification to the general process disclosed in Widmer et al used to make a hearing aid shell. While Widmer et al may desire to make the shell directly from the digital information, obviousness only requires a reasonable expectation of success, not an assurance. Based on the disclosure of the prior art in Widmer et al, it is respectfully submitted that making a negative mold—instead of a shell—from the digital information would have been an obvious modification to Widmer et al so that one could make the shell of materials different than those used to make the mold. Also, if it is known to make a product directly from digital data, it surely would have been obvious to make a mold from that data and then make the product from that mold. This kind of processing is notoriously well known in the art and performed regularly in order to tailor the materials used for the final product.

Applicant traverses these assertions.

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All elements and limitations of Applicant's independent claim 1 are not taught in the Widmer reference nor made obvious from the Widmer reference. The shell taught in the Widmer reference cannot be used as a negative mold as the device created when using the shell in the mold would not fit properly in a user's ear. The shell taught in Widmer has an outside surface that is based on the outside dimensions of the auditory canal and is not a negative mold that has an inside surface that has dimensions the same as the outside dimensions of the auditory canal. The fact that the outside surface of the shell in Widmer has the outside dimensions of the auditory canal does not allow the shell in Widmer to act as a negative mold of the outside dimensions of the auditory canal "suitable for receipt of a soft solid", as recited in independent claim 1.

Also, Widmer does not render making a negative mold from dimension data obvious as the Widmer reference appears to teach making the shell using an "additive built-up processes" (column 4, lines 7-9) which is a manufacturing method that bypasses the step of using a mold. Although the Widmer reference teaches 3D digitizing of the dimensions of a user's ear, using the digitized dimensions for making a negative mold is not taught or suggested in the Widmer reference. The only use for the digitized dimensions taught in Widmer appear to be for a built-up process that alleviates the need to use a mold for fabricating a device.

The Examiner states that is "notoriously well known" to "make a mold from that (digital) data and then make the product from that mold." However, the Examiner relies on the Widmer reference for showing only the use of digital ear data and then states the use of molds is "notoriously well known", so the digital ear data taught in the Widmer reference could be used to make a mold. Applicant respectfully submits that the Examiner has not provided a reference to show processing the outside auditory canal dimension data to generate outside mold data and creating a negative hearing aid mold having an inside surface with dimensions the same as the outside dimensions of the auditory canal, as provided in claim 1.

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Based on the forgoing, reconsideration and withdrawal of the 103 rejection for independent claim 1 as well as those claims that depend therefrom is respectfully requested.

Claims 3-5 and 26 were rejected under 35 USC § 103(a) as being unpatentable over Widmer et al. (U.S. Patent No. 6,540,045) in view of Rubbert et al. (U.S. Patent No. 7,027,642) for reasons of record as set forth in paragraph 2, supra, and paragraph 5 of the previous action. Applicant respectfully traverses the rejections as follows.

Claims 3-5 are dependent on independent claim 1, which is in condition for allowance for at least the reasons stated above. That is, Widmer does not support a proper prima facie case of obviousness as Widmer, besides other things, does not describe or suggest all the elements and limitations recited in claim 1. Rubbert does not cure the deficiencies of Widmer. For example, Rubbert does not describe, teach, or suggest, independently or in combination with Widmer, processing the outside auditory canal dimension data to generate outside mold data and creating a negative hearing aid mold having an inside surface with dimensions the same as the outside dimensions of the auditory canal, with the negative hearing aid mold suitable for receipt of a soft solid, as provided in claim 1.

Applicant submits that independent claim 26 is also in condition for allowance for at least the reasons stated above with respect to claim 1. That is, Widmer does not support a proper prima facie case of obviousness as Widmer, besides other things, does not describe or suggest all the elements recited in claim 26. Rubbert does not cure the deficiencies of Widmer. For example, Rubbert does not describe, teach, or suggest, independently or in combination with Widmer, processing the outside auditory canal dimension data to generate outside mold data and creating a negative hearing aid mold having an inside surface with dimensions the same as the outside dimensions of the auditory canal, with the negative hearing aid mold suitable for receipt of a soft solid, as provided in claim 26.

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As such, Applicant respectfully submits that each and every element and limitation of claims 3-5 and 26 are not taught or suggested by Rubbert and Widmer, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of dependent claims 3-5 and independent claim 26.

Claim 21 was rejected under 35 USC § 103(a) as being unpatentable over Widmer et al. (U.S. Patent No. 6,540,045) in view of Jordan et al. (U.S. Patent No. 6,152,731) for reasons of record as set forth in paragraph 2, supra, and paragraph 6 of the previous action. Applicant respectfully traverses the rejections as follows.

Claim 21 is dependent on independent claim 1, which is in condition for allowance for at least the reasons stated above. That is, Widmer does not support a proper prima facie case of obviousness as Widmer, besides other things, does not describe or suggest all the elements recited in claim 1. Jordan does not cure the deficiencies of Widmer. For example, Jordan does not describe, teach, or suggest, independently or in combination with Widmer, processing the outside auditory canal dimension data to generate outside mold data and creating a negative hearing aid mold having an inside surface with dimensions the same as the outside dimensions of the auditory canal, with the negative hearing aid mold suitable for receipt of a soft solid, as provided in claim 1.

As such, Applicant respectfully submits that each and every element and limitation of claim 21 is not taught or suggested by Jordan and Widmer, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of dependent claim 21.

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Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0123 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 C.F.R. §1.8:

The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent Office facsimile number (571) 273-8300 on

4/21/08
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